

**GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Backward Classes Welfare Department – Appeal Petition filed by Sri S.Kullai Saheb alias Kullayappa, YSR District against the proceedings issued by the Collector & District Magistrate, YSR District No.R.Dis.C5/702/M/2011, Dated.02.04.2016 – Under Section 7 (2) of the Andhra Pradesh (Scheduled Castes, Schedules Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16 of 1993) – Appeal petition allowed – Orders – Issued.

BACKWARD CLASSES WELFARE (F) DEPARTMENT

G.O.MS.No. 7

Dated: 21-04-2017
Read the following :-

1. Proceedings of the Collector & District Magistrate, YSR District R.Dis.C5/702/M/2011, Dated.02.04.2016.
2. Appeal Petition filed by Sri S Kullai Saheb alias Kullayappa, Vempalli Town & Mandal, YSR District Dated.20.04.2016.
3. Govt., Memo No.754/C/A2/2016, Dated.22.04.2016.
4. From the District Collector, YSR District Lr.No.C5/314/M/2016, Dated.06.05.2016.
5. Govt., Memo No.754/C/A2/2016, Dated.18.06.2016.
6. From the District Collector, Kadapa Lr.No.C5/314/M/2016, Dated.27.07.2016.
7. Govt., Memo No.754/C/A2/2016, Dated.09.02.2017, 16.02.2017 & 10.03.2017
8. Written arguments filed by the Counsel for the Appellant before the Appellate Authority on 15.03.2017.

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ORDER :

In the reference 1st read above, the Collector & District Magistrate, YSR District has issued orders cancelling the BC-B Dudekula Caste Certificates of 1.Shaik Fareeda Begum presently working as SG Asst, Marella Madaka Village, Chakarayapet (M), YSR District 2. Shaik Vahida presently studying MD General Medicine at IIMS, Pondicherri and 3. Shaik Asha presently working as Clerk at SBI Pulivendula Town Branch, Pulivendula (M), YSR District biological daughters of Sri Shaik Kullai Saheb alias Kullayappa, a native of Pullaiah Thota, Vempalli Village and Mandal, YSR District.

2. In the reference 2nd read above Sri S.Kullai Saheb alias Kullayappa, Vempalli Town & Mandal, YSR District has filed an Appeal Petition before the Government against the said Proceedings of the District Collector, YSR Kadapa District. After examining the said Appeal Petition, Government have admitted the said Appeal Petition & granted stay on the said proceedings of the District Collector, YSR Kadapa District and called for the parawise remarks and connected records from the District Collector, YSR District vide reference 3rd read above.

3. In the reference 6th read above, the Collector & District Magistrate, YSR District has furnished the parawise remarks and connected records on the said appeal Petition filed by Sri S.Kullai Saheb alias Kullayappa, Vempalli Town & Mandal, YSR District.

4. The said Appeal Petition has been posted for hearing on 17.02.2017 & 15.03.2017 and the same has been informed to the appellant and the Counsel for the appellant and they were requested to attend for the hearing along with all Documentary Evidences / Certificates and represent his case in person or through authorized Counsel. The appellant and Counsel for the Appellant have attended the said hearing before the Hon'ble Appellate Authority and argued the case and explained his community status and filed Written arguments before the Hon'ble Appellate Authority in support of his community claim in the reference 8th read above.

Pto

5. After hearing both the sides and on perusal of the records / the copies of evidences / academic record / grounds filed by the Appellant / the parawise remarks submitted by the Collector & District Magistrate, YSR District and proceedings of the District Collector, YSR District, dated.02.04.2016, it is observed by the Appellate Authority that :

- i. The case was posted for hearing on 15-03-2017 the appellant has represented by his counsel and while reiterating their grounds of appeal have stated that the complainant that the whole proceedings by the District Collector was initiated on the complaint petition filed by Sri Madar Saheb who is nothing but the own brother-in-law of the appellant Sri Shaik Kullaya Saheb Alias kullayappa. The applicant has argued that the complaint who was inimically deposed against him due to property dispute and police complaint was also lodged against the complainant by the appellant wife. In IA No.31/2012 in Os NO.23/2012, that the complainant has misused the affidavit filed by the wife of the appellant wherein she has stated that she belongs to Muslim. He has further contended that the complainant has also relied on another document relating to the judgment pronounced by Junior Civil Judge, Pulivendula in OS No, 324/1999 inwhich complainant himself is the plaintiff and he files the OS No 324/1999 to claim the rentals from the appellant .In the said case the complainant him self has mentioned the caste of the complainant as Muslim. The complainant as also relied in the entries made in the school records of the appellant wherein the caste of the appellant was mentioned Muslim. The complainant having relied up on the evidence contained in the above three documents has contended the appellant belongs to Muslim community but not Dudekula. The Enquiry Officer as well as District Level Scrutiny Committee as also relied on the above documents and also deposition recorded with the villagers the complainant madar sahib and other villagers who belongs to the complainant Kullaya sahib i.e Kullayappa Belongs to Muslim by caste but not Dudekula has claimed by him for his children. The enquiry officer has also concluded that the appellant realized that his father has erroneously recorded his caste as Muslim instead of Dudekula at the time of his admission in his school records nothing prevented the appellant to get it rectified after he attained majority and realized that his caste was misquoted in his school records. This line of conclusion was also raised by the complaint at the time of his deposition during enquiry.
- ii. Further it is observed that, the document produced by the complainant and relied on by the enquiry officer amply shows that the caste of the appellant was mentioned as Muslim by the complainant himself naturally as appellant was got married the sister of the complainant who is Muslim by caste. The appellant has produced copies necessary documents which amply shows that the complainant him self has inimically deposed against him and also bore a eyesore due to upcoming of the children of the appellant in education and career. The complainant and police find by the wife of the appellant against the complainant who is brother of wife of appellant also amply shows the enmity between the two families.
- iii. The appellant never disputed the entries made in the school admissions register school during mention his caste as Muslim by his parents due to their illiteracy and ignorance for which the appellant cannot find fault with this, he has also contended that his father at the time of admission of the appellant in his school as recorded his caste as Muslim instead of Dudekula. Though the customs and traditions of his fore fathers relates to the same custom and traditions being adopted by Dudekula community out of his father might have got registered his caste as Muslim due to ignorance and might also keeping in view of the respect and social status being commended by the Muslim community when compare to Dudekula community and in-order to keep respect in the society his father might have written his caste as Muslim instead of Dudekula but is also on record to shows that one of the daughter

of the appellant has also got married to person hailing from Dudekula family. The complainant has also admitted this fact in his deposition recorded during the enquiry. Having realized that much in justice and irreparable loss has caused due to mentioning of his caste as Muslim instead of Dudekula in his school records and to avoid such lapse and repetition of mistake he got registered the caste of his children as Dudekula at the time of admission in school records right from the beginning of their education if the complainant who happens to be the brother-in-law of the appellant ought to have lodged his objections to this act of the appellant at the time of according the caste of the children of the appellant at admission stage it self but having kept deaf all along these days and after lapse of some decades when the children of the appellant are upcoming and perusing of their higher studies in medical profession and after the retirement of the complainant has open his eyes and lodge the compliant only after he bore a grudge and inimically deposed of the family of the appellant due to lodging a police complaint against the appellant .The enquiry officer ought to have also gone into the aspect and should have verified the motive behind the complaint lodged by the brother-in-law of the appellant .And the enquiry as per principles of natural justice it is bounded duty of the enquiry officer to go in depth of the motive behind the complaint. In spite of bringing this fact to the notice of the Enquiry Officer by the appellant the enquiry officer has not given any due weight age to this aspect as such. Further, the enquiry officer has also relied on the documents produced by the complainant especially the sworn affidavit filed by the wife of the appellant in a Civil Suit claiming her community as Muslim. The enquiry officer ought to have realized that the caste of the wife of the appellant is nothing but the caste of the complainant (i.e.) Muslim as wife of the appellant is nothing but the sister of the complainant. Though her marriages solemnized with the appellant but her status and caste continue to be the caste of her parents hence counsel of the appellant wife might have written her caste as Muslim in the affidavit filed in the Civil Suit. This aspect was simply ignored by the Enquiry Officer and relied on the said documents and concluded the appellant caste is recorded as Muslim in the Civil Suit.

- iv. Further, it is observed that, the enquiry report of the tahsildar which reveals by the enquiry officer has solely relied on the documents produced by the complainant and also the depositions given by the complainant and his relatives as per the procedure envisaged in the rules and guidelines already issued relating to the procedure to be adopted while dealing the complainant relating to the caste certificate, The enquiry officer must get the matter enquired in such a manner that the customs and traditions being practiced by the elders of the persons against whom complaint has been lodged by visiting their native villages of their fore fathers and also their present status where is in this case it appears that the enquiry officer has not gone in to the fundamental aspects and failed to follow the procedure laid down under the relevant rules and executive instructions issued from time to time.
- v. The enquiry officer has also concluded that the appellant attended a programme organized by MPDO office Vempalli regarding the marriages to poor Muslim minorities on 19-10-2012 representing the Muslim. If such is the case is also brought on record by the appellant that he is working as organizing secretary for Dudekula Muslim Samkshema Sangham at pulivendla. The enquiry officer should have given weightage to this aspects also on the same count as mentioned above. Taking the totality of the circumstances of the case into consideration it appears that the enquiry conducted by the Tahsildar visiatuded from the laid down procedure and his finding are not reflecting as the actual ground realities and impugned proceedings issued by the Collector, YSR District who has solely relied on the findings of enquiry officer as well as the District Level Scrutiny Committee suffers from propriety, Regularity and principles of natural justice.

6. In view of the above facts and circumstances, the Government is of considered view that the order of Cancellation of caste certificate formerly issued in favour of the Appellant as Dudekula is not sustainable under Law and hence the order of the Collector and District Magistrate, YSR District passed in Proceedings R.Dis.C5/702/M/2011, Dated.02.04.2016 is liable to be interfered with. Further, the Government has no hesitation to hold that by the impugned order of the Collector and District Magistrate, YSR District, has ignored the principles of natural justice and has gone in haste cancelling the Caste Certificates. Even though the impugned order of learned Collector is very lengthy he has not considered, relevant aspects which obviously have the strength to reverse the finding, if they are considered. Therefore, the Government is opinion that the principles of natural justice should be followed at any rate and violation of the same would entail the subject order liable to interference.

7. The Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Caste, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act No.16 of 1993), hereby allow the Appeal Petition filed by Sri S.Kullai Saheb alias Kullayappa, Vempalli Town & Mandal, YSR District and the proceedings of the Collector and District Magistrate, YSR District issued in the reference 1st read above are set-aside.

8. Consequently, the Collector and District Magistrate YSR District shall take necessary action in the matter.

9. The records (containing 759 pages cf and 24 pages nf) received from the Collector and District Magistrate, YSR District through reference 6th read above are returned herewith in original to the District Collector, YSR District and he shall acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**G.ANANTHA RAMU
PRINCIPAL SECRETARY TO GOVERNMENT (FAC)**

To

The Collector and District Magistrate, YSR District (w.e)

(with original records) (BY RPAD)

Sri S.Kullai Saheb alias Kullayappa, D.No.13/313 K, Gandhi Road, Vempalli Village & Mandal, YSR District, Andhra Pradesh – 516 329.

The Director, B.C.Welfare, A.P., Vijayawada.

Copy to

The OSD to M (BCW).

The P.S to Prl.Secretary, BCW.

SF / SC

//FORWARDED :: BY ORDER//

SECTION OFFICER